

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

HAROLD STEPHEN DYKES,

Plaintiff,

vs.

BRIAN MURPHY, et al.,

Defendants.

Case No. 4:09CV1062 HEA

ORDER

This matter is before the Court on plaintiff's motion for leave to proceed in forma pauperis on appeal [Doc. #31].

28 U.S.C. § 1915 (a)

Title 28 U.S.C. § 1915(a)(1), (2) requires a prisoner seeking leave to appeal in forma pauperis to submit an affidavit of indigency and a certified copy of his prison account statement for the six month period immediately preceding the filing of the notice of appeal. Furthermore, § 1915(b)(1) requires a prisoner seeking leave to proceed on appeal in forma pauperis to pay the full amount of the filing fee.¹ If the prisoner has insufficient funds in his prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account; or (2) the average monthly balance in the prisoner's account for the prior six month period. See 28 U.S.C. § 1915 (b)(1). After payment

¹The total fee for filing an appeal is \$455. This consists of a \$5 fee, usually referred to as a "filing fee," and a \$450 fee, usually referred to as a "docketing fee." The \$5 fee is required by 28 U.S.C. § 1917 "[u]pon the filing of any separate or joint notice of appeal." The \$450 "docketing fee" is required by resolution of the Judicial Conference of the United States, See Report of the Proceedings of the Judicial Conference of the United States 12 (March 17, 1987), acting pursuant to its authority to determine "[t]he fees and costs to be charged and collected in each court of appeals." 28 U.S.C. § 1913.

of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. See 28 U.S.C. § 1915 (b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid.

Discussion

Plaintiff has not submitted a certified copy of his prisoner account statement for the six month period immediately preceding the filing of his notice of appeal. Therefore, the Court will order plaintiff to submit a certified copy of his prisoner account statement for the six month period immediately preceding the filing of his notice of appeal pursuant to 28 U.S.C. § 1915 (a)(1)(2).

In accordance with the foregoing,

IT IS HEREBY ORDERED that plaintiff's motion for leave to proceed in forma pauperis on appeal [Doc. #31] is **HELD IN ABEYANCE** until plaintiff submits a certified prisoner account statement.

IT IS FURTHER ORDERED that the plaintiff shall file a certified copy of his prisoner account statement for **the six month period immediately preceding the filing of his notice of appeal on June 24, 2010.** ²

²When requesting a certified copy of his prison account statement, plaintiff is instructed to inform the Department of Corrections that the account statement must include all activity on his account during the six month period preceding the filing of his notice of appeal on June 24, 2010.

IT IS FURTHER ORDERED that if plaintiff fails to submit a certified copy of his prisoner account statement within thirty days from the date of this order, the Court will order him to pay the full \$455 filing and docketing fees for filing an appeal. *See Henderson v. Norris*, 129 F.3d 481 (8th Cir. 1997).

Dated this 28th day of June, 2010.

A handwritten signature in dark ink, appearing to read "Henry Edward Autrey", is positioned above a horizontal line.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE